H.R. 4842, U.S.-Morocco Free Trade Agreement
Rep. Henry A. Waxman
July 22, 2004

Mr. Speaker. I deeply value the close relationship between the United States and Morocco and the effort to strengthen our economic ties. Morocco is one of our strongest partners in the war on terrorism. The Kingdom, under the leadership of King Hassan II and now his son King Mohammed VI, has long been a steadfast supporter and key player in the Middle East peace process. Its recent designation as a major non-NATO ally is an important step toward further enhancing coordination between our countries on security issues.

In many ways, this free trade agreement, or FTA, is a tribute to the significant economic and political reforms that Morocco has recently undertaken to stimulate growth and development. I strongly support the FTA's robust anti-piracy standards to protect the transmission of digital, satellite, and other copyrighted material, as well as broad market access for a wide array of audio visual products and services. I regretfully rise in opposition to this agreement, however, because of a number of other troubling provisions that could have profound public health consequences for the Moroccan people.

At the crossroads between Africa and Europe, Morocco is actively engaged in the battle against the spread of the HIV/AIDS epidemic. With nineteen percent of its people living in poverty, the country's healthcare system is stretched thin and heavily reliant on the availability of generic drugs. It is shocking to me that despite this reality, the Bush Administration's trade negotiators demanded intellectual property restrictions that will severely curtail Morocco's generic market.

Most egregiously, the FTA requires Morocco to grant an automatic five-year monopoly to all new drugs introduced in the market, freeing them from competition with less expensive generic copies even if their patents have already expired. The Bush Administration maintains that it negotiated the standard based on U.S. laws like Hatch-Waxman, which provides similar protections for new drugs introduced in the United States. But this is a distortion of the bill I co-authored. When Hatch-Waxman was devised in 1984, virtually no generic drugs were available in the United States. The law was passed to increase competition by easing the approval of low-cost generics while providing specified periods of exclusive marketing to help pharmaceutical companies recoup development costs. In sharp contrast, Morocco is a country with a robust generic market where the introduction of this measure will only reduce competition and cause drug prices to soar.

As a co-author of Hatch-Waxman, I cannot emphasize enough that this carefully balanced legislation represented a tailored solution to a specific regulatory problem in the United States. It is irresponsible for U.S. trade negotiators to apply the same policy in a developing country like Morocco whose generic drug market, health-care regulatory system, and public health needs look nothing like those in the United States.

Although the Bush Administration has cited the inclusion of similar provisions in the Jordan FTA as a precedent, there is clear evidence that the restrictions on the availability of generics have already had a terrible impact there. First, as the *Wall Street Journal* recently reported from an interview with the Executive Director of the Global Fund to Fight AIDS, AIDS drugs purchased in Jordan with Global Fund money cost an average of $7,000 a year per patient, compared with the average $250 to $400 paid in other countries. Second, the U.S.-Jordan FTA was signed before the WTO's Doha Declaration on trade and health authorized developing countries like Jordan to resist such regulatory changes and preserve access to affordable drugs for life-threatening diseases.

Under this agreement, the Moroccan government could not import generic copies of drugs if domestic prices became too expensive because the FTA codifies U.S. and Moroccan laws that allow patent holders to block the importation of their product. Here in the United States this provision undermines the ongoing debate in Congress over the legalization of re-importation of low-cost drugs. In Morocco, however, it is much more damaging because it makes it impossible for Morocco to change its laws, as permitted by the Doha Declaration, to import drugs if a public health crisis arises.

In the event of a public health emergency, the only recourse Morocco would have is to strip a drug of its patent and issue a compulsory license for another company to produce a generic copy and distribute it at a lower cost. Even then, however, Morocco would be vulnerable to a trade challenge because the FTA's investment chapter allows companies to sue for the expropriation of intellectual property. Although the agreement specifies that a challenge could not be made over the use of the patent in order to produce the generic copy, it does permit challenges over the use of a company's undisclosed safety and efficacy testing data to approve its distribution.

The pharmaceutical industry has spoken openly about its efforts to raise drug prices and profit margins around the world. I do not think we should let drug companies use trade agreements to undermine the Doha Declaration and get health policy changes they could not otherwise achieve. Unfortunately, these provisions have become part of a cookie-cutter mold that also appears in the recently negotiated U.S. FTAs with middle and high-income countries like Chile, Singapore, Australia, and Bahrain, as well as poverty-stricken developing countries like Thailand, Southern Africa, and the countries in the Andean and Central American regions.

Another serious public health problem posed by the U.S.-Morocco FTA is its across the board cuts in agricultural tariffs that will eliminate Morocco's 25 percent tariffs on imported cigarettes. Although Morocco's 65 percent excise taxes on cigarettes will remain in place, I am disappointed that the FTA could increase cigarette consumption in a country where smoking is common among youth. In fact, in July 2002, I sent a letter asking the Centers for Disease Control a series of questions about the impact of tariff reductions in trade negotiations on cigarette consumption. After two years the letter has gone unanswered even as trade agreements with Morocco and Thailand have moved forward without regard to the crisis of tobacco addiction in these countries.

I believe in the benefits of free trade, but not at the expense of public health. While I strongly support our alliance with Morocco and want to support this trade agreement, I cannot do so in good conscience. I hope that future trade negotiations will work for more progressive and forward-looking agreements that both expand markets and advance positions more respectful of our trade partners' public health needs.